



House of Representatives

General Assembly

File No. 14

January Session, 2015

Substitute House Bill No. 5195

House of Representatives, March 3, 2015

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING UNINSURED AND UNDERINSURED MOTORIST COVERAGE TO BE OPTIONAL AND REPEALING THE PROHIBITION ON SUBROGATION OF UNDERINSURED MOTORIST CLAIMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-336 of the general statutes, as amended by
2 section 1 of public act 14-20, is repealed and the following is
3 substituted in lieu thereof (*Effective October 1, 2015*):

4 (a) (1) [Each] (A) (i) Prior to January 1, 2016, each automobile
5 liability insurance policy shall provide insurance, herein called
6 uninsured and underinsured motorist coverage, in accordance with
7 the regulations adopted pursuant to section 38a-334, with limits for
8 bodily injury or death not less than those specified in subsection (a) of
9 section 14-112, for the protection of persons insured thereunder who
10 are legally entitled to recover damages because of bodily injury,
11 including death resulting therefrom, from owners or operators of
12 uninsured motor vehicles and underinsured motor vehicles and
13 insured motor vehicles, the insurer of which becomes insolvent prior

14 to payment of such damages. [, because of bodily injury, including
15 death resulting therefrom.]

16 (ii) On or after January 1, 2016, each insurer licensed to write
17 automobile liability insurance in this state shall offer, for each
18 automobile liability insurance policy issued or renewed on or after
19 January 1, 2016, and for an additional premium, uninsured and
20 underinsured motorist coverage as set forth in subparagraph (A)(i) of
21 this subdivision. The insurer shall disclose to an applicant or insured
22 the availability and the premium cost of and a description of
23 uninsured and underinsured motorist coverage. Each insured who
24 declines uninsured and underinsured motorist coverage shall sign an
25 informed consent form as set forth in subparagraph (A) of subdivision
26 (2) of this subsection.

27 (B) Each insurer licensed to write automobile liability insurance in
28 this state shall provide, prior to January 1, 2016, and shall offer, on or
29 after January 1, 2016, uninsured and underinsured [motorists] motorist
30 coverage with limits requested by any named insured upon payment
31 of the appropriate premium, provided each such insurer shall offer
32 such coverage with limits that are twice the limits of the bodily injury
33 coverage of the policy issued to the named insured. The insured's
34 selection of uninsured and underinsured motorist coverage shall apply
35 to all subsequent renewals of coverage and to all policies or
36 endorsements [which] that extend, change, supersede or replace an
37 existing policy issued to the named insured, unless changed in writing
38 by any named insured.

39 (C) No insurer shall be required to provide uninsured and
40 underinsured motorist coverage to [(A)] (i) a named insured or
41 relatives residing in [his] the named insured's household when
42 occupying, or struck as a pedestrian by, an uninsured or underinsured
43 motor vehicle or a motorcycle that is owned by the named insured,
44 except as provided in subparagraph (D) of this subdivision, or [(B)] (ii)
45 any insured occupying an uninsured or underinsured motor vehicle or
46 motorcycle that is owned by such insured.

47 (D) For each automobile liability insurance policy issued or renewed
48 on or after October 1, 2014, an insurer shall not deny uninsured
49 motorist coverage to a named insured or any relative residing in the
50 named insured's household solely on the basis that the named insured
51 or such relative was struck as a pedestrian by a motor vehicle or
52 motorcycle, during the theft of such motor vehicle or motorcycle, that
53 is owned by the named insured and listed as a covered motor vehicle
54 on the named insured's policy.

55 (2) [Notwithstanding any provision of this section, each] (A) Each
56 automobile liability insurance policy issued or renewed on and after
57 January 1, 1994, and prior to January 1, 2016, shall provide, and each
58 insurer licensed to write automobile liability insurance in this state
59 shall offer, for each automobile liability insurance policy issued or
60 renewed on or after January 1, 2016, uninsured and underinsured
61 motorist coverage with limits for bodily injury and death equal to
62 those purchased to protect against loss resulting from the liability
63 imposed by law unless any named insured requests in writing a lesser
64 amount, but not less than the limits specified in subsection (a) of
65 section 14-112. Such written request shall apply to all subsequent
66 renewals of coverage and to all policies or endorsements that extend,
67 change, supersede or replace an existing policy issued to the named
68 insured, unless changed in writing by any named insured. No such
69 written request for a lesser amount shall be effective unless any named
70 insured has signed an informed consent form that [shall contain: (A)
71 An explanation of uninsured and underinsured motorist insurance
72 approved by the commissioner; (B)] contains: (i) Explanations,
73 approved by the commissioner, of (I) uninsured and underinsured
74 motorist coverage, and (II) uninsured and underinsured motorist
75 conversion coverage; (ii) a list of uninsured and underinsured motorist
76 coverage options and underinsured motorist conversion coverage
77 options available from the insurer; and [(C)] (iii) the premium cost for
78 each of the coverage options available from the insurer. Such informed
79 consent form shall contain a heading in twelve-point type and shall
80 state: "WHEN YOU SIGN THIS FORM, YOU ARE CHOOSING A
81 REDUCED PREMIUM, BUT YOU ARE ALSO CHOOSING NOT TO

82 PURCHASE CERTAIN VALUABLE COVERAGE WHICH PROTECTS
83 YOU AND YOUR FAMILY. IF YOU ARE UNCERTAIN ABOUT HOW
84 THIS DECISION WILL AFFECT YOU, YOU SHOULD GET ADVICE
85 FROM YOUR INSURANCE AGENT OR ANOTHER QUALIFIED
86 ADVISER."

87 (B) Each insured who declines uninsured and underinsured
88 motorist coverage or underinsured motorist conversion coverage, or
89 both, shall sign an informed consent form as set forth in subparagraph
90 (A) of this subdivision.

91 (b) An insurance company shall be obligated to make payment to its
92 insured up to the limits of the policy's uninsured and underinsured
93 motorist coverage after the limits of liability under all bodily injury
94 liability bonds or insurance policies applicable at the time of the
95 accident have been exhausted by payment of judgments or settlements,
96 but in no event shall the total amount of recovery from all policies,
97 including any amount recovered under the insured's uninsured and
98 underinsured motorist coverage, exceed the limits of the insured's
99 uninsured and underinsured motorist coverage. In no event shall there
100 be any reduction of uninsured or underinsured motorist coverage
101 limits or benefits payable (1) for amounts received by the insured for
102 Social Security disability benefits paid or payable pursuant to the
103 Social Security Act, 42 USC Section 301, et seq., or (2) with respect to an
104 automobile liability insurance policy issued or renewed on or after
105 October 1, 2015, (A) for amounts paid by or on behalf of any tortfeasor
106 for bodily injury to anyone other than individuals insured under the
107 policy against which the claim is made, or (B) for amounts paid by or
108 on behalf of any tortfeasor for property damage. The limitation on the
109 total amount of recovery from all policies shall not apply to
110 underinsured motorist conversion coverage purchased pursuant to
111 section 38a-336a, as amended by this act.

112 (c) Each automobile liability insurance policy issued on or after
113 October 1, 1971, which contains a provision for binding arbitration
114 shall include a provision for final determination of insurance coverage

115 in such arbitration proceeding. With respect to any claim submitted to
116 arbitration on or after October 1, 1983, the arbitration proceeding shall
117 be conducted by a single arbitrator if the amount in demand is forty
118 thousand dollars or less or by a panel of three arbitrators if the amount
119 in demand is more than forty thousand dollars.

120 (d) Regardless of the number of policies issued, vehicles or
121 premiums shown on a policy, premiums paid, persons covered,
122 vehicles involved in an accident, or claims made, in no event shall the
123 limit of liability for uninsured and underinsured motorist coverage
124 applicable to two or more motor vehicles covered under the same or
125 separate policies be added together to determine the limit of liability
126 for such coverage available to an injured person or persons for any one
127 accident. If a person insured for uninsured and underinsured motorist
128 coverage is an occupant of a nonowned vehicle covered by a policy
129 also providing uninsured and underinsured motorist coverage, the
130 coverage of the occupied vehicle shall be primary and any coverage for
131 which such person is a named insured shall be secondary. All other
132 applicable policies shall be excess. The total amount of uninsured and
133 underinsured motorist coverage recoverable is limited to the highest
134 amount recoverable under the primary policy, the secondary policy or
135 any one of the excess policies. The amount paid under the excess
136 policies shall be apportioned in accordance with the proportion that
137 the limits of each excess policy bear to the total limits of the excess
138 policies. If any person insured for uninsured and underinsured
139 motorist coverage is an occupant of an owned vehicle, the uninsured
140 and underinsured motorist coverage afforded by the policy covering
141 the vehicle occupied at the time of the accident shall be the only
142 uninsured and underinsured motorist coverage available.

143 (e) For the purposes of this section, an "underinsured motor vehicle"
144 means a motor vehicle with respect to which the sum of the limits of
145 liability under all bodily injury liability bonds and insurance policies
146 applicable at the time of the accident is less than the applicable limits
147 of liability under the uninsured motorist portion of the policy against
148 which claim is made under subsection (b) of this section.

149 (f) Notwithstanding subsection (a) of section 31-284, an employee of
150 a named insured injured while occupying a covered motor vehicle in
151 the course of employment shall be covered by such insured's otherwise
152 applicable uninsured and underinsured motorist coverage.

153 (g) (1) No insurance company doing business in this state may limit
154 the time within which any suit may be brought against it or any
155 demand for arbitration on a claim may be made on the uninsured or
156 underinsured motorist provisions of an automobile liability insurance
157 policy to a period of less than three years from the date of accident,
158 provided, in the case of an underinsured motorist claim the insured
159 may toll any applicable limitation period (A) by notifying such insurer
160 prior to the expiration of the applicable limitation period, in writing, of
161 any claim which the insured may have for underinsured motorist
162 benefits and (B) by commencing suit or demanding arbitration under
163 the terms of the policy not more than one hundred eighty days from
164 the date of exhaustion of the limits of liability under all automobile
165 bodily injury liability bonds or automobile insurance policies
166 applicable at the time of the accident by settlements or final judgments
167 after any appeals.

168 (2) Notwithstanding the provisions of subdivision (1) of this
169 subsection, in the case of an uninsured motorist claim, if the motor
170 vehicle of a tortfeasor is an uninsured motor vehicle because the
171 automobile liability insurance company of such tortfeasor becomes
172 insolvent or denies coverage, no insurance company doing business in
173 this state may limit the time within which any suit may be brought
174 against it or any demand for arbitration on a claim may be made on
175 the uninsured motorist provisions of an automobile liability insurance
176 policy to a period of less than one year from the date of receipt by the
177 insured of written notice of such insolvency of, or denial of coverage
178 by, such automobile liability insurance company.

179 Sec. 2. Section 38a-336a of the general statutes is repealed and the
180 following is substituted in lieu thereof (*Effective October 1, 2015*):

181 (a) Each insurer licensed to write automobile liability insurance in

182 this state shall offer, for an additional premium, underinsured motorist
183 conversion coverage with limits in accordance with section 38a-336, as
184 amended by this act. The purchase of such underinsured motorist
185 conversion coverage shall be in lieu of underinsured motorist coverage
186 pursuant to section 38a-336, as amended by this act. For each new
187 automobile liability insurance policy issued on or after January 1, 2016,
188 the insurer shall disclose to an insured at the time of sale or issuance
189 the availability of, the premium cost and a description of underinsured
190 motorist conversion coverage. [Such description of coverage shall be
191 included in a conspicuous manner with the] Each insured who
192 declines underinsured motorist conversion coverage shall sign an
193 informed consent form as specified in subdivision (2) of subsection (a)
194 of section 38a-336, as amended by this act.

195 (b) Such underinsured motorist conversion coverage shall provide
196 for the protection of persons insured thereunder who are legally
197 entitled to recover damages from owners or operators of underinsured
198 motor vehicles.

199 (c) Each insurer shall be obligated to pay to the insured, up to the
200 limits of the policy's underinsured motorist conversion coverage, after
201 the limits of liability under all bodily injury liability bonds or
202 insurance policies applicable at the time of the accident have been
203 exhausted by payment of judgments or settlements. If the insured
204 purchases such underinsured motorist conversion coverage, then in no
205 event shall the underinsured motorist coverage be reduced on account
206 of any payment by or on behalf of the tortfeasor or by any third party.

207 (d) The selection of coverage under this section shall apply to all
208 subsequent renewals of coverage and to all policies or endorsements
209 [which] that extend, change, supersede or replace an existing policy
210 issued to the named insured, unless changed in writing by any named
211 insured.

212 (e) For purposes of this section, an "underinsured motor vehicle"
213 means a motor vehicle with respect to which the sum of all payments
214 received by or on behalf of the covered person from or on behalf of the

215 tortfeasor are less than the fair, just and reasonable damages of the
216 covered person.

217 Sec. 3. Section 38a-389 of the general statutes is repealed and the
218 following is substituted in lieu thereof (*Effective October 1, 2015*):

219 (a) (1) The General Assembly finds and concludes that the system of
220 bodily injury liability, basic and added reparations benefits and
221 uninsured and underinsured motorist insurance, as amended by the
222 provisions of public act 93-297, will generate premium savings for
223 policyholders with such coverages.

224 [(b)] (2) Each insurer licensed to sell private passenger automobile
225 insurance in this state shall refile, with the Insurance Commissioner, its
226 base rates for such coverages to reflect the elimination of mandatory
227 basic and added reparations benefits pursuant to public act 93-297 and
228 any additional premium savings attributable to said act. Such rates
229 shall be refiled, as soon as practicable, for use with policies effective on
230 or after January 1, 1994.

231 [(c)] (3) Upon receipt of the initial base rate filing made under this
232 section, the Insurance Commissioner, before permitting such filing to
233 become effective, shall consult with an independent actuary for the
234 purpose of assuring that such rates reflect both [(1)] (A) the insurer's
235 rates on file on May 1, 1993, adjusted for cost trends from the date of
236 filing to January 1, 1994, [; and (2)] and (B) the elimination of
237 mandatory basic and added reparations benefits pursuant to public act
238 93-297 and any additional premium savings attributable to said act.
239 Such revised rates shall be applicable to all new and renewal policies
240 effective on or after January 1, 1994.

241 [(d)] (4) The base rates for bodily injury liability coverage and
242 uninsured and underinsured motorist coverage that are filed
243 subsequent to the initial filing of base rates pursuant to this section
244 shall be subject to prior rate approval in the same manner as in a
245 noncompetitive market pursuant to subdivision (2) of subsection (a) of
246 section 38a-688.

247 (b) (1) Each insurer licensed to sell private passenger automobile
248 insurance in this state shall refile, with the Insurance Commissioner, its
249 base rates for such coverages to reflect the elimination of mandatory
250 uninsured and underinsured motorist coverage and any additional
251 premium savings attributable to such elimination. Such rates shall be
252 refiled, as soon as practicable, for use with policies effective on or after
253 January 1, 2016.

254 (2) Upon receipt of the initial base rate filing made under this
255 section, the Insurance Commissioner, before permitting such filing to
256 become effective, shall consult with an independent actuary for the
257 purpose of assuring that such rates reflect both (A) the insurer's rates
258 on file on May 1, 2015, adjusted for cost trends from the date of filing
259 to January 1, 2016; and (B) the elimination of mandatory uninsured
260 and underinsured motorist coverage and any additional premium
261 savings attributable to such elimination. Such revised rates shall be
262 applicable to all new and renewal policies effective on or after January
263 1, 2016.

264 (3) The base rates for bodily injury liability coverage and uninsured
265 and underinsured motorist coverage that are filed subsequent to the
266 initial filing of base rates pursuant to this section shall be subject to
267 prior rate approval in the same manner as in a noncompetitive market
268 pursuant to subdivision (2) of subsection (a) of section 38a-688.

269 Sec. 4. Section 38a-351a of the general statutes is repealed and the
270 following is substituted in lieu thereof (*Effective October 1, 2015*):

271 [Except as prohibited by section 38a-336b, if] If an insurer chooses to
272 exercise its right of subrogation pursuant to the terms of an automobile
273 liability insurance policy, such insurer shall include in such
274 subrogation demand the amount of any collision deductible paid by
275 such insured, unless such insured requests such insurer not to include
276 such amount. The insurer shall share subrogation recoveries with the
277 insured on a proportionate basis.

278 Sec. 5. Section 38a-336b of the general statutes is repealed. (*Effective*

279 October 1, 2015)

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	38a-336
Sec. 2	October 1, 2015	38a-336a
Sec. 3	October 1, 2015	38a-389
Sec. 4	October 1, 2015	38a-351a
Sec. 5	October 1, 2015	Repealer section

Statement of Legislative Commissioners:

In section 1(a), references to policies and coverages prior to January 1, 2016, were inserted and other provisions were rephrased to specify that the current law remains in effect through December 31, 2015.

INS Joint Favorable Subst. -LCO

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill changes the requirements for uninsured motorist insurance coverage. As this concerns private insurance requirements, there is no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5195*****AN ACT REQUIRING UNINSURED AND UNDERINSURED MOTORIST COVERAGE TO BE OPTIONAL AND REPEALING THE PROHIBITION ON SUBROGATION OF UNDERINSURED MOTORIST CLAIMS.*****SUMMARY:**

This bill makes uninsured and underinsured motorist coverage an optional, rather than mandatory, part of automobile liability insurance policies issued or renewed after December 31, 2015. The coverage, which insurers must offer, is available for an additional premium.

The bill requires insurers to inform applicants and insureds of the optional coverage, disclosing its availability, description, and premium cost. Under current law, insurers must provide this information only about underinsured motorist conversion coverage.

Under the bill, insureds who decline uninsured and underinsured motorist coverage, underinsured motorist conversion coverage, or both, must sign an informed consent form. The bill adds conversion coverage information to the form. Current law requires insureds who seek a reduction in uninsured and underinsured motorist coverage to sign the form.

The bill requires insurers to refile rates with the insurance commissioner that reflect the switch to optional coverage.

It also allows insurers that provide underinsured motorist coverage to subrogate against underinsured vehicles' owners or operators (i.e., sue to recover underinsured motorist benefits they paid to their insureds). Current law bans this action.

Lastly, the bill (1) incorporates a ban, passed in 2014, on denying

uninsured motorist coverage to certain named insureds or relatives and (2) makes other minor, conforming, and technical changes (see BACKGROUND).

EFFECTIVE DATE: October 1, 2015

INFORMED CONSENT FORM

The bill adds to the information on the informed consent form (1) a commissioner-approved explanation of uninsured and underinsured motorist conversion coverage, (2) a list of conversion coverage options, and (3) the conversion coverage premium cost. The form already contains this information about uninsured and underinsured motorist coverage (but not conversion coverage), as well as a disclosure statement.

PREMIUM RATES

The bill requires insurers to refile base rates to reflect (1) the shift to optional uninsured and underinsured motorist coverage and (2) any added premium savings caused by the change. The rates must be filed as soon as practicable for use with policies effective after December 31, 2015.

Base rates require prior approval as they would in a noncompetitive market. Before approving the initial base rate, the commissioner must consult with an independent actuary to assure that the rates reflect the (1) insurer's rates on file as of May 1, 2015, adjusted for cost trends from the date of filing to January 1, 2016 and (2) shift to optional coverage and any added premium savings. The new rates apply to policies issued or renewed after December 31, 2015.

BACKGROUND

Public Acts 14-20 and 14-71

In 2014, the legislature passed two related bills on uninsured and underinsured motorist coverage. PA 14-71 prohibits insurers from denying uninsured motorist coverage to a named insured or related household member solely because he or she is struck as a pedestrian

by, and during the theft of, the insured's covered vehicle. PA 14-20, which modifies the same statutory section and takes effect October 1, 2015, does not include the ban. It was unclear whether the ban would expire when PA-14-20 takes effect; however, this bill incorporates the ban to reconcile the language.

Uninsured and Underinsured Motorist Coverage

Uninsured motorist coverage compensates a policyholder for expenses incurred when another driver who is at fault for an accident (1) has no auto liability insurance or (2) is a hit-and-run driver. Underinsured motorist coverage compensates a policyholder when the at-fault driver has an insufficient amount of auto liability insurance.

Underinsured Motorist Conversion Coverage

Underinsured motorist conversion coverage also compensates a policyholder for expenses incurred when an at-fault driver has an insufficient amount of auto liability insurance. Unlike uninsured and underinsured motorist coverage, conversion coverage compensates the insured without reducing the coverage limit by the amount received from the at-fault driver or his or her insurance.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 18 Nay 1 (02/17/2015)